IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10263 OF 2004

Vickers System International Ltd. .. Petitioner

Vs.

Sai Kripa Services and ors. .. Respondents

Mr. A.D. Patwardhan with Mr. K.S. Bapat for Petitioner.
Mr. P.S. Moholkar for Respondent No.1.
Mr. N.A. Kulkarni with Mr. A.A. Shikarkhane for Respondent Nos.2 to 7.

CORAM: B.H. MARLAPALLE, J.

Date : June 17, 2005.

P.C.:

1. Rule. Respondents waive service. By consent rule is taken up for hearing forthwith. Heard both sides.

2. By the impugned order dated 20/4/2004 passed below Exh.O-1 the learned Member of the Industrial Tribunal at Pune had stayed the trial of Reference (IT) No.18 of 2001 awaiting final decision in Writ Petition No.4133 of 1998 and by order dated 23/4/2004

the learned Member of the Industrial Tribunal at Pune was pleased to reject the application below Exh.U-15 for recalling the earlier order dated 20/4/2004.

3. The record shows that Writ Petition No.4133 of 1998 was admitted by order dated 12-8-1998 and interim relief in terms of prayer clause (b) was granted. Consequently, the respondent-employer and the contractor were directed not to terminate the services of the contract labourer. On account of non removal of office objections, the said writ petition came to be dismissed pursuant to the order dated 12-3-1999 and it was transferred to the Decree Department on 7/7/1999. Thus, the petition does not remain on the file of this court and during the last about six years or so no application for restoration of the petition as ever been filed by the petitioners or their counsel.

4. It is evident that the learned Member of the Industrial Tribunal, Pune was not aware that Writ Petition No.4133 of 1998 did not remain on the file of this court when the impugned order was passed and

neither he was made aware by the learned counsel for the workmen in this behalf.

5. As is evident from the impugned order the Complaint (ULP) No.265 of 1994 was filed by the contract labourer against the present petitioner as well as respondent no.1 seeking relief of permanency in the employment of the petitioner-company. The complaint was dismissed by the Industrial Court vide its judgment and order dated 29/1/1998 and the said order was challenged in Writ Petition No.4133 of 1998 which does not survive any more. It is now well settled that the issue of employee employer relationship between the principal employer and the contract labourer is required to be decided by an adjudication in a reference made under the Industrial Disputes Act, 1947 and such an issue cannot be decided in a complaint of unfair labour practice filed for seeking permanency under the principal employer on the ground that the contract was fake and sham and the contract labourers were in fact the employees of the principal employer or there was prohibition to employ contract labour pursuant to the orders passed by the

Competent Authority under the Contract Labour (Abolition & Regulation) Act, 1971. In view of this legal position as at present in fact the reference was required to be continued notwithstanding the alleged pendency of Writ Petition No.4133 of 1998. In any case the impugned orders are unsustainable on either of the grounds and, therefore, the same are to be set aside.

6. In the result, this petition succeeds and the same is hereby allowed by quashing and setting aside the impugned orders dated 20/4/2004 and 23/4/2004 passed by the learned Member of the Industrial Tribunal, Pune in Reference (IT) No.18 of 2001. The trial of the Reference is hereby expedited. Rule made absolute accordingly with no order as to cost. Writ to go forthwith to the Industrial Tribunal.

(B.H. Marlapalle,J.)